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| PRE-APPEAL BRIEF REQUEST FOR REVIEW   |   | Docket Number (Optional)<br>0112855.00121US3 |
|   | Application Number<br>10/725,673-Conf.<br>#5522 | Filed<br>December 3, 2003                    |
|   | First Named Inventor<br>Jordan COHEN et al.     |  |
|   | Art Unit<br>2618                                | Examiner<br>M. D. Dao                        |
| <p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s).<br/>       Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant /inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest.<br/>       See 37 CFR 3.71. Statement under 37 CFR 3.73(b)<br/>       is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record.<br/>       Registration number <u>32,590</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34.<br/>       Registration number if acting under 37 CFR 1.34. _____</p> <p><br/> <u>Eric L. Prahl</u><br/>       Signature</p> <p><u>Eric L. Prahl</u><br/>       Typed or printed name</p> <p><u>(617) 526-6000</u><br/>       Telephone number</p> <p><u>November 13, 2009</u><br/>       Date</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.<br/>       Submit multiple forms if more than one signature is required, see below*.</p> <p><input type="checkbox"/> *Total of <u>1</u> forms are submitted.</p> |   |  |

The examiner rejected claims 1, 4, 5, 9, 11, 13, 14, 16, 18-28, 30, 31, 46, and 47 under 35 U.S.C. §103(a) as being unpatentable over U.S. 6,029,065 to Shah in view of U.S. 8,859,699 to Carroll et al. (Carroll) and further in view of U.S. 6,526,336 to Treyz et al. (Treyz).

The Examiner admits that Shah does not disclose “activating and deactivating enhanced features through a wireless transceiver circuit and by a transmitted key that was sent by a remote source to that mobile communication device.” For this missing feature, the Examiner relies on Carroll and Treyz.

As we acknowledged before, Carroll does indeed discuss a method according to which authorized users of his system must submit an activation code from the remote service provider before being able to access data or functionality downloaded from that service provider (see Abstract). Carroll’s system is designed to prevent the distribution and use by unauthorized users of data and functionality obtained from the service provider. The most relevant disclosure includes the paragraphs identified by the examiner:

According to one embodiment, system security may be obtained by using activation codes to control distribution of the service data. An activation code is similar to a key to unlock the service data downloaded to automotive service systems. Only authorized users will be provided with an activation code. Without a valid activation code, even if the service data is properly downloaded, it cannot be properly installed on or used by the automotive service system. The activation code may be provided to customers when the automotive systems are shipped or obtained by telephone or e-mail when users subscribe to the service.

Activation codes can be used in conjunction with product codes to achieve higher system security. For instance, the remote service provider generates an activation code based on a product code submitted by a valid user. The activation code is then sent to the user for activating the downloaded service data. A software program that runs on the automotive service system will access the product code of the automotive service system and determine whether the product code of the automotive service system matches with the product code from which the activation code is generated. Unless a proper match is obtained, the activation code will not unlock the downloaded software. By this process, verification of identities of hardware and software is conducted. Thus, duplicates of downloaded service data and activation code cannot properly operate on other unauthorized automotive service systems, as a check of product codes would not generate a match. (Col. 7, line 60 to col. 8, line 9).

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In other words, Carroll’s activation code serves to turn on the functionality that the user downloaded. There is no suggestion of a code which serves to turn off that functionality. Stated differently, **Carroll does not teach or even suggest the use of a software switch which enables toggling back and forth between activation and deactivation states.**

The examiner admits that Shah and Carroll do not mention multiple levels of speech recognition in the peripheral. So, the examiner relies on Treyz which he characterizes as disclosing “a software switch for toggling back and forth between first and second states.” The two states to which the examiner is referring are a native language capability and a foreign language capability.

We note, however, that the user of Treyz’s automobile personal computer 14 selects the language that is to be used. Treyz says:

The user may direct automobile personal computer 14 to use different languages when using its voice-recognition and voice-synthesis capabilities. Illustrative steps involved in using automobile personal computer 14 to operate with different languages are shown in FIG. 96. At step 1038, the user may be provided with an opportunity to select a language to use for voice-synthesis operations (e.g., when reading text e-mail and the like) and to select a language to be used during voice control. (Col. 73, lines 48-56).

There is no suggestion that “toggling from the first state to the second state is accomplished by receiving through the wireless transceiver circuit a transmitted key that was sent by a remote source to that cellular phone,” as recited in the claims.

It is true that Carroll does disclose sending an activation code. However, if a person of ordinary skill in the art were to use Carroll’s activation code feature in connection with Shah’s system as modified by Treyz, the result would be a device in which the activation code enables the user to turn on the voice synthesis and/or voice recognition functionality of the device. Though that functionality might also include the ability for the user to toggle between languages, there is no suggestion to use the activation code to perform that toggling or to switch from a first state to a second state. There is no suggestion or motivation to take control of the language feature out of the hands of the user and put it into the hands of the entity that distributed the code.

The examiner argues that “[i]t would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the above teaching of Treyz to Shah and Carroll in order to obtain a system as recited in claim 1 for the purpose of wirelessly providing user options (as taught by Carroll) to speak in their native language or foreign language as preferred when using the voice recognition function as taught by Treyz.” However, the examiner has read more into Carroll than is actually present. Carroll does not teach or suggest “wirelessly providing user options.” As pointed out above, Carroll teaches the use of an activation code to

unlock downloaded software. That is not the same as providing user options, e.g. toggling between basic features and enhanced features of the downloaded software.

Claims 14 and 16 include limitations similar to those discussed above in connection with claim 1. In addition claim 14 also recites “at some later time after activating the enhanced features in the selected phone, transmitting a deactivation key to the selected phone for causing the application program in the cellular phone to switch from the activated state to the deactivated state.” And claim 16 recites “activating an enhanced functionality of the embedded software in response to a digital activation key, the enhanced functionality including a natural language capability further facilitating verbal control of the phone; and deactivating the enhanced functionality of the embedded software in response to a digital activation key.” None of the references teach or suggest the use of a deactivation key of the type recited in these claims.

For at least the reasons stated above, we believe that the claims are in condition for allowance and therefore ask that they be allowed to issue.

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